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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 382

WALTER E. BANTOM, JR., ET AL.,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Claims

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION

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The Brief for the United States in Opposition serves only to emphasize the importance of the real questions involved and the need for their solution.

Although the respondent attempts to minimize the issues, it cannot be denied that new principles have been established which are in conflict with decisions of this Court, Courts of Appeal and earlier decisions of the Court of Claims; nor can it be denied that unless corrected the

statutory rights of federal employees to have all hours worked counted and paid for will be denied.

1) The Court of Claims establishes for the government, as an employer, the defense of ignorance of its own employment practices. For many years this Court, and other Courts, without exception, have insisted that compliance with statutory wage, hour, child labor safety and other standards of emplyment is the employers respondibility and that ignorance of violation is no defense.

Although the government would deemphasize the importance of this question by a casual footnote reference to it, it can hardly be denied that the rights of hundreds of thousands of federal workers are placed in jeopardy if the decision stands, for under the principle adopted below an agency need only issue a regulation calling for compliance and then proceed to ignore it with impunity. In this area there can be no lawful or equitable basis for distinguishing in the application of statutory labor standards between private and public employees.

2) Nor simply by saying it isn't so, can the government obscure the plain conflict between the decision below and the decisions of the Courts of Appeal such as Culkin v. Martin, 97 F. Supp 661, 197 F2d 981 (C.A. 8) and that Court's earlier decision in Albright v. U.S. Ct. Cl. No. 263-6.

3) The practice of employing workers for 8½ hours and paying them for eight violates the statute. And that violation cannot be swept under the rug by a rationalization of the facts in the face of clear uncontradicted testimony coming from witnesses for the government as well as for the petitioners. These facts are not open to contest on this record.

a) On the C shift and on Saturday and Sunday there were no eating facilities available. Employees went with-

out eating for the 8½ hour period or ate on the job (Pet. app. 11, 13, 16, 18, 19).

b) On the B shift the cafeteria was not open. (Pet. App. 16).

c) Although a regulation theoretically permitted 30 minutes for lunch, it was conditioned on (1) the employee being able to leave his post, (2) a replacement being provided for him, and (3) the employee giving notice of a telephone where he could be reached, and (4) remaining in uniform with side arms attached. (Pet. App. 19, 21).

d) Only infrequently were employees relieved (Pet. App. 14, 15, 22). Instead, they ate at their desks, at their posts, or took hasty snacks. There is no evidence to counter the showing made that regular periods of 30 minutes or more were not made available for eating during which employees were relieved of their duties. (Pet. App. 11, 12, 14, 15, 16, 17, 18, 19).

e) Only after the complaint made in this case did the agency finally in May, 1962 provide the necessary instructions and implementation to make possible a regular lunch period free of duties (Pet. App. 11, 21). (Petitioners do not seek recovery after May, 1962).

4) Finally there is proposed here, in ence, to establish a dangerous and arbitrary rule to the effect that the government may lawfully assume that during an 8½ hour period, employees must have stopped to eat somehow somewhere and that therefore it would be proper to deduct 30 minutes time. This flies squarely in the face of the principles established by the Secretary of Labor, providing that under the Wage Hour laws all hours of work must be counted toward overtime, that rest periods of 20 minutes or less are counted as time worked, and that lunch periods must be at least 30 minutes and the employee be fully relieved of his duties. (Pet. p. 9)

Respondent is mistaken on its reliance on the Armour and Skidmore cases. The question of whether the 8 hours out of 24, spent in regular eating and sleeping, were compensable hours, was not before this Court in the Armour and Skidmore cases. The Court simply held that productive work and on call time spent in recreation during 16 of 24 hours spent on the employers premises constituted working time. However, the principles established there are applicable. The Court, it will be remembered, extended the category of working time to "on call" periods although no physical or mental exertion was involved. It was on the basis of these and other decisions cited that the Secretary of Labor formulated his position relating to "on call" time and "Rest and Meal Periods" set forth in a footnote on p. 9 of the Petition. There is nothing here to justify a departure during normal working periods of the judicially approved concepts relating to meal periods. In fact, the government recognized this when it belatedly, after suit was filed, issued firm and fully implemented instructions providing a regular 30 minute lunch period during which employees are completely relieved of duties.

For these and other reasons cited in the petition, we respectfully submit that certiorari should be granted.

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